

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

11-CR-6019L

v.

JERROD MITCHELL,

Defendant.

This Court referred all motions and other pretrial matters in this criminal case to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b).

Defendant filed several motions, including a motion for a bill of particulars, severance from his co-defendants, as well as a motion to suppress statements made at the time of his arrest.

On February 2, 2012, the Magistrate Judge conducted a suppression hearing on the motions to suppress and at that time Magistrate Judge Feldman issued an oral Report and Recommendation recommending to this Court that the motions to suppress be denied. The Magistrate Judge reserved with respect to defendant's motion for a bill of particulars and for severance.

The Magistrate Judge ruled on those motions in a Decision and Order (Dkt. #67) filed May 2, 2012. In a thorough decision, the Magistrate Judge denied the motion for a bill of particulars; he also denied the motion for severance but granted leave to defendant to renew the motion before this Court.

Concerning the motion to suppress, the defendant duly filed objections to the Report and Recommendation which also constituted his appeal of the Magistrate Judge's Decision denying the

request for a bill of particulars and for a severance (Dkt. #70). The Government responded to the defense's objections (Dkt. #72).

As to the appeal from the Magistrate Judge's Decision denying a request for a bill of particulars and for severance, I affirm the Magistrate Judge's decision. The standard of review for such an appeal is whether the Magistrate Judge's Decision is clearly erroneous or contrary to law. I find neither and believe the Magistrate Judge's Decision was sound, based on the facts and the law, and I see no need to reverse or modify in any way. As the Magistrate Judge noted, the request made by defendant for information is outside the scope of a bill of particulars and, in any event, the Government represents that it has produced over 3,000 pages of material from its file. For these and for the reasons stated in the Magistrate Judge's Decision, I find no bill of particulars is warranted.

I also believe the Magistrate Judge correctly denied defendant's motion for severance from his two co-defendants. It is true that the evidence against the co-defendants involves some different charges and evidence that may not be directly relevant to this defendant, nevertheless, I am not convinced that multiple trials are warranted. There generally is a preference, especially in a conspiracy prosecution, for joint trials. It is certainly not remarkable that the evidence may be different or stronger as to some defendants than is the case as to others.

The Magistrate Judge did grant leave to renew the severance motion before this Court. At this time, I see no basis to grant the requested severance for the reasons advanced by both Magistrate Judge Feldman and the Government in its response to defendant's objections. Nevertheless, as the matter proceeds closer to trial, and there is a clearer proffer of proof from both the Government and the defendant, defendant may renew the motion to this Court.

Concerning the Magistrate Judge's oral Report and Recommendation that I deny the motion to suppress statements, I see no basis to reject, modify or reverse that recommendation and, therefore, defendant Jerrod Mitchell's motion to suppress oral statements made at the time of his arrest is denied.


Proceedings before the Magistrate Judge are tape recorded and this Court has had the opportunity to review the recordings of the suppression hearing and entry of the Magistrate Judge's oral Report and Recommendation on February 2, 2012. At the end of the hearing, the Magistrate Judge read his decision into the record citing both the facts of this case and legal authority. I agree with the Magistrate Judge that although the defendant had not been read his *Miranda* rights, there was no custodial interrogation by the arresting officer. All the arresting agent did was advise the defendant that he had a warrant for the defendant. At that time, the defendant made certain statements that he now seeks to suppress. There is no basis to suppress these spontaneous statements, and I believe, as did the Magistrate Judge, that they were not the product of any custodial interrogation, or its functional equivalent.

CONCLUSION

The Court affirms the Decision and Order of United States Magistrate Judge Jonathan W. Feldman (Dkt. #67) denying the request for a bill of particulars and denying the request for severance.

The Court accepts and adopts the oral Report and Recommendation of Magistrate Judge Feldman, entered February 2, 2012 in all respects and, therefore, defendant's motion to suppress statements made at the time of his arrest is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
July 5, 2012.